

Repayment options clarified. Provisions of (a) deleted. New (a) added to permit repayment in full before retirement allowance is drawn, or repayment by retention of the benefits until the balance with interest is paid. New (b) added to permit members retiring on disability to follow (a) or continue the deductions in effect immediately before retirement. New (c) added, with conditions, to permit members to convert to disability retirement. Old (b) recodified to (d) and amended to clarify repayment upon death of retiree.

17:2-6.5 Willful negligence

(a) Willful negligence is defined as:

1. Deliberate act or deliberate failure to act; or,
2. Such conduct as evidences reckless indifference to safety; or,
3. Intoxication, operating as the proximate cause of injury.

17:2-6.6 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the system.

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

As amended, R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

As amended, R.1981 d.274, effective August 6, 1981.

See: 13 N.J.R. 244(f), 13 N.J.R. 525(b).

(b) added.

Amended by R.1991 d.98, effective February 19, 1991.

See: 22 N.J.R. 3321(a), 23 N.J.R. 417(a).

Amount of pension contribution clarified.

Case Notes

Pension credit; time of dishonorable employment with county. *Calviere v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 178.

17:2-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by his employer, or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the board finds that:

1. The member was under the age of 60 at the time of filing application for a disability retirement allowance; and
2. The member is physically or mentally incapacitated for the performance of duty; and
3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties; and
4. The member meets the service requirement for ordinary disability.

Case Notes

To be eligible for accidental disability retirement benefits where disability involved combined effect of traumatic event and underlying disease, traumatic source must constitute the essential significant or substantial contributing cause of resultant disability; employee's slip and fall against automobile tailgate held a traumatic event; remand to Appellate Division to determine whether traumatic event was of such nature as to allow benefits eligibility under enunciated standard (citing former rule). *Korelnia v. Bd. of Trustees, Public Employees Retirement System*, 83 N.J. 163, 416 A.2d 308 (1980).

Slipping on running board of van and lifting potted plants were not traumatic events for purposes of accidental disability retirement benefits. *Malvossi v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 179.

Accidental disability retirement benefits were properly denied to warehouseman whose disability resulted from willful negligence due to intoxication. *Dale v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 172.

Dispatcher who was hit in the head when file cabinet toppled over on her did not suffer traumatic event entitling her to accidental disability retirement benefits. *Scholl v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 150.

Injuries sustained in slow-moving automobile did not constitute traumatic event entitling claimant to accidental disability retirement benefits. *Fawcett v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 138.

Physical education teacher's collision with two opening doors was not traumatic event entitling her to accidental disability retirement benefits. *Kamal v. Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 124.

School employee permanently injured by slip and fall on icy steps did not experience traumatic event entitling him to accidental disability retirement benefits. *Winslow v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 122.

Sudden attack on police officer by three assailants constituted traumatic event entitling officer to award of accidental disability retirement

benefits. *Tribuzio v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 114.

Employee's fall down staircase was not traumatic event entitling her to either accidental or ordinary disability benefits. *Rankin v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 98.

Carpenter who dropped block of wood on his own hand did not qualify for accidental disability benefits because injury did not result from traumatic event. *Powell v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 97.

Car seat shooting was not "traumatic event" for purposes of accidental disability retirement benefits. *Hall v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 89.

Dispatcher's fall from table was not traumatic event warranting award of accidental disability retirement benefits. *Zaranka v. PERS*, 96 N.J.A.R.2d (TYP) 76.

State Police officer was properly denied accidental disability retirement benefits for migraine condition which was not direct result of traumatic injury. *Chippendale v. State Police Retirement System*, 96 N.J.A.R.2d (TYP) 70.

School bus driver disabled by tendinitis and carpal tunnel syndrome caused by stress and strain of normal work effort was not entitled to accidental disability benefits. *Smith v. PERS*, 96 N.J.A.R.2d (TYP) 67.

Fall from chair was not traumatic event for purpose of awarding accidental disability benefits. *Eglow v. PERS*, 96 N.J.A.R.2d (TYP) 60.

Neck injury sustained when elevator fell one foot was not traumatic event warranting accidental disability retirement benefits. *Knoster v. PERS*, 96 N.J.A.R.2d (TYP) 53.

Developmental center employee's severe health problems entitled her to disability retirement allowance. *Hawkins v. PERS*, 96 N.J.A.R.2d (TYP) 46.

Bus driver not eligible for accidental disability retirement benefits when disabling knee injury not result of traumatic event. *Santana v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 16.

Injury to corrections officer's back, resulting from fall in which he was landed on by three other men, constituted traumatic event for purposes of accidental disability retirement benefit eligibility. *D'Ippolito v. Public Employees' Retirement System*, 96 N.J.A.R.2d (TYP) 9.

Multiple dwelling inspector struck by falling door entitled to accidental disability retirement benefits. *Salerno v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 11.

Public employee is not entitled to accidental disability retirement; three and one half foot fall did not constitute traumatic event. *Flores v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 6.

Clerk typist who failed to prove that she was unemployable due to carpal tunnel impairment was denied ordinary disability retirement. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 212.

Failure to show that injuries were work related. *Catrambone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 199.

Failure to prove chemical fumes at work place; accidental disability retirement. *Boychuk v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 193.

Denial of petitioner's application for accidental disability retirement allowance was appropriate. *Post v. Public Employees' Retirement System*, Board of Trustees, 94 N.J.A.R.2d (TYP) 122.

Diabetic employee was not entitled to accidental disability retirement benefits. *Morgan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 95.

Epileptic employee suffering from recurrent; accidental disability retirement allowance. *Lojik v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 91.

Request for accidental disability retirement benefits; traumatic event. *Gilmore v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 89.

Disability benefits approved for school matron suffering arthritic changes. *Mirra v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 78.

Accidental disability retirement denied; "traumatic event". *Cook v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 76.

Employee failed to establish that he was permanently and totally disabled from performance of duties. *Weldon v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 68.

Accidental disability benefits; fall on staircase was not caused by a great rush of force or uncontrollable power. *Zech v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 45.

Back injury did not result from a traumatic event. *Ferro v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 42.

Rheumatoid arthritis; ordinary disability retirement. *Daggs v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 39.

Accidental disability retirement benefits were properly denied; "traumatic event". *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Petitioner who fell from a height of less than two feet was not eligible for accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Fall of less than two feet from a chair; accidental disability pension. *Snead v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 36.

Accidental disability retirement benefits properly denied; membership. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Denial of accidental disability retirement benefits was appropriate; employee was not member of PERS at time of accident. *Donovan v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 33.

Accidental disability retirement benefits denied; not member in Public Employees' Retirement System at time of accident. *Donovan v. Public Employees' Retirement system*, 94 N.J.A.R.2d (TYP) 33.

Willful negligence precluded award of accidental disability pension benefits. *DeInnocentes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 26.

Disability pension was properly denied. *Barnes v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 22.

Accidental disability retirement; injury not result from traumatic event. *Pannone v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 18.

Claim for accidental disability retirement did not involve "a great rush of force or uncontrollable power," and therefore was not a traumatic event. *Morgillo v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 13.

Claim for accidental disability retirement properly denied. *Hanuszak v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 10.

Ordinary disability retirement benefits denied. *Carcich v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 6.

Claim for accidental disability retirement benefits based on post-traumatic stress disorder properly denied. *Birch v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 1.

Employee's slip and fall did not constitute a "traumatic event". *Moore v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 338.

Worker who slipped and fell not entitled to accidental disability retirement benefits. *Collins v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 334.

Physical conditions of which employee complained, absent medical proof as to performance and capability, were insufficient to warrant ordinary disability retirement. *Willard v. Retirement System*, 93 N.J.A.R.2d (TYP) 306.

Accidental disability benefits were calculable from date of accident which led to retirement, rather than from last day of work. *Muscarella v. Retirement System*, 93 N.J.A.R.2d (TYP) 296.

Absent stress or strain from normal work effort, injury was not a traumatic event giving rise to accidental disability retirement. *Landau v. Retirement System*, 93 N.J.A.R.2d (TYP) 280.

Withdrawal of contributions from pension system operated as waiver of right to vested disability pension. *DeGraaff v. Retirement System*, 93 N.J.A.R.2d (TYP) 269.

Fall from prison bus was not traumatic event entitling correction officer to accidental disability benefits. *Crescenzo v. Retirement System*, 93 N.J.A.R.2d (TYP) 267.

Psychiatric worker experienced traumatic event warranting accidental disability benefits when caught in door by patient. *Reed v. Retirement System*, 93 N.J.A.R.2d (TYP) 258.

Attacks upon worker by youths at treatment center were traumatic events warranting accidental disability pension benefits. *Noonan v. Retirement System*, 93 N.J.A.R.2d (TYP) 254.

Accidental disability retirement allowance was not available absent evidence of causation and a traumatic event. *Davis v. Retirement System*, 93 N.J.A.R.2d (TYP) 243.

Back injury due to losing balance while loading heavy drums of cleaning fluid onto truck not result of traumatic event qualifying employee for accidental disability retirement benefits. *Fithian v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 213.

Eligibility for ordinary disability retirement benefits as result of psychiatric disability. *Kenerley v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 185.

An X-ray technician injured by sudden movement of low-functioning patient was not entitled to accidental disability pension. *Peters v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 159.

Being pulled onto table by patient not traumatic event qualifying X-ray technician for accidental disability retirement benefits. *Peters v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 159.

Employee's handicap did not make ground level slip and fall traumatic event qualifying him for accidental disability retirement benefits. *Juchniewicz v. Board of Trustees, Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 137.

Major depression and generalized anxiety did not entitle housing manager to ordinary disability retirement benefits where manager showed improvement with antidepressant medication. *Cappucio v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 98.

Worker hit by falling oven racks entitled to accidental disability retirement benefits. *Wagner v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 75.

Psychiatric hospital worker slipped and fell on floor; thus, no traumatic event for accidental disability retirement purposes. *Brown v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 61.

School custodian's neck and back injuries physically incapacitated him from performing his work, entitling him to ordinary disability retirement pension. *Rich v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 34.

Slip and fall on mashed potatoes and lifting cases of milk not traumatic events so as to qualify employee for accidental disability retirement benefits. *Bodie v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 29.

Back injury sustained when jerked off balance by 300-pound psychiatric patient not traumatic event entitling X-ray technician to accidental disability retirement benefits. *Downs v. Board of Trustees of the Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 13.

Library aide entitled to ordinary disability retirement benefits due to back condition even though she continued to work during application process. *Bok v. Board of Trustees, Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 3.

Public works inspector injured in car accident entitled to accidental disability retirement benefits for traumatic event occurring in course of duty. *Woods v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 160.

Slip and fall on wet floor not traumatic event entitling carpenter to accidental disability retirement benefits. *Osback v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 141.

Hospital attendant struck in back by patient lift entitled to accidental disability benefits despite prior degenerative disc disease. *Dix v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 138.

Falling off ladder not direct cause of injury; thus, no eligibility for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 105.

Security guard with coronary heart disease not entitled to accidental disability retirement benefits; insufficient causality between traumatic event and subsequent heart attack. *Zaharioudakis v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 93.

Worker's injuries induced by stress and strain of normal work effort, and not result of traumatic event qualifying him for accidental disability retirement benefits. *Rinaldis v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 88.

Ground level fall not traumatic event qualifying hospital worker for accidental disability retirement benefits. *Evans v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 85.

Road construction worker who inhaled fumes from new blacktop mixture was not injured as result of traumatic event entitling him to accidental disability retirement benefits. *Beverly v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 41.

Fall from ground level cannot constitute great rush of force necessary to find traumatic event entitling claimant to accidental disability retirement benefits. *Keaton v. Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 37.

Hospital attendant's injury while assisting patient from bed to chair did not result from traumatic event qualifying her for accidental disability retirement benefits. *Siniscalchi v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 30.

Supervisor's transfer threats did not constitute a traumatic event qualifying employee for accidental disability retirement benefits. *Fay v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 27.

Maintenance worker's fall from three foot scaffolding was not traumatic event entitling him to accidental disability retirement benefits. *Minkus v. Board of Trustees of the Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 19.

School crossing guard's fall on sidewalk was not traumatic event in course of employment entitling her to accidental disability retirement benefits. *Osinga v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 16.

17:2-6.8 Option selection

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the board for retirement, in accordance with N.J.A.C. 17:2-6.7, he will be permitted within 30 days following board approval of his retirement, to amend the option selection which he made on the original accidental disability retirement application.

As amended, R.1971 d.71, effective May 18, 1971.
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

17:2-6.9 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is rejected for accidental disability retirement because the board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and, if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the system will notify both the member and his employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the system by both the employee and his employer. Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

17:2-6.10 Employer application; employee notice

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of his employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate,
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties; and
4. He has a period of 30 days to contest his involuntary retirement before the board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and

6. In the event the board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance, (without option) payable under the statute, if he (the member) does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and

7. In the event the board finds that he is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

17:2-6.11 Early retirement benefits

(a) The statutory reduction of one quarter of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if his 55th birthday occurs on or after the 15th day of the month.

(b) Retirement on the first of the month in which a member attains age 55 shall be classed as "early" retirement, although a reduction is not applied if his 55th birthday occurs before the middle of such month.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

17:2-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the 1st of the month following his 60th birthday.

Case Notes

Denial of petitioner's request for additional four years of creditable service was appropriate. *Alcaro v. Division of Pensions, the Alternate Benefit Program*, 94 N.J.A.R.2d (TYP) 124.

17:2-6.13 Disability retirant; annual medical examinations

(a) All disability retirants, under age 60, may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the System as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

(b) Failure on the part of a retirant to submit to the required medical examination shall result in the automatic suspension of his retirement allowance until he submits to a medical examination.

Case Notes

Township not required to reinstate formerly disabled employee who resigned before applying for disability benefits. *Township of Dover v. Board of Trustees, Public Employees' Retirement System*, 92 N.J.A.R.2d (TYP) 83.

17:2-6.14 Disability retiree; annual report (employment, earnings, test and adjustment)

(a) All disability retirees, under age 60, shall be required to file a report with the System indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of each year.

1. Such report must be filed with the System before the following February 15th.

2. Failure on the part of the retiree to file a completed report with the System before February 15 shall result in the automatic suspension of the retiree's retirement allowance for the period the report is in default.

(b) If a retiree reports employment and earnings, then the following tests shall be made by the System to ascertain:

1. If the retiree is engaged in a position subject to coverage by the System, his retirement allowance shall be cancelled and he shall be reenrolled in the system pursuant to N.J.S.A. 43:15A-44, effective as of the date of his appointment to such position.

2. If the retiree is engaged in employment and he estimates that his gross earned income for the present calendar year will exceed the difference between his pension and the salary he would have been receiving had he continued to work for his former employer (normal increment steps and salary range revisions will be considered but no promotional assumptions will be made) his pension for the period may be adjusted by such difference. If, at the close of the calendar year it is found that

his earnings differ from his estimate, an appropriate adjustment will be made.

3. If such a retiree has not properly estimated his gross earned income for the calendar year and it is found at the close of the calendar year it exceeded the difference between his pension and the salary of his former position and if he does not refund the excess pension to the system within 30 days, effective April 1, his pension for the succeeding 12-month period will be reduced by the excess pension he received in the preceding calendar year.

17:2-6.15 (Reserved)

Amended by R.1974 d.230, effective August 19, 1974.

See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Amended by R.1977 d.148, effective April 27, 1977.

See: 9 N.J.R. 142(b), 9 N.J.R. 295(a).

Repealed by R.1989 d.597, effective December 4, 1989.

See: 21 N.J.R. 3265(a), 21 N.J.R. 3929(c).

Case Notes

Presiding judge of county district court held the appointing authority for the district court clerk; clerk, upon reaching retirement age, and being notified by appointing authority that he may no longer continue in position, must retire. In re Brennan, 126 N.J.Super. 368, 314 A.2d 610 (App.Div.1974).

17:2-6.16 Compulsory retirement; law enforcement officers

(a) Members classified as "law enforcement officers" shall be retired automatically by the board as of the compulsory retirement date established pursuant to N.J.S.A. 43:15A-99.

(b) Should a member classified as law enforcement officer fail to file application with the system before his compulsory retirement date, he shall be granted the maximum allowance payable on his account; however, no retirement checks will be disbursed until he files the required application.

(c) If an application is not filed with the system before a period of 30 days has elapsed after the board has acted on his retirement, he shall not be eligible to exercise any of the available retirement survivorship options and his retirement on maximum allowance shall stand as approved.

(d) When such a member files his application with the system, he shall be eligible to receive retirement benefits for the months that have elapsed since the date of his compulsory retirement, provided satisfactory evidence is received to show that he terminated employment as of his compulsory retirement date.

(e) No retirement benefits shall be paid for any period the member continued in service beyond his compulsory retirement date, nor shall he receive any credit for retirement purposes for salary received or service rendered beyond his compulsory retirement date.

(f) An LEO member who is also enrolled as a non-LEO member cannot continue his LEO membership or employment in his LEO capacity beyond age 65 should he continue his membership on the basis of his non-LEO position.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

17:2-6.17 Approved allowance

When a retirement allowance becomes effective, the type of allowance (maximum or option) elected shall stand as approved.

17:2-6.18 Option "1" benefit

The reserve established under the provisions of Option "1" shall be a form of reducing term insurance, as the reserve shall reduce in value by the amount of the retiree's monthly allowance, whether received or not, for each month that he survives after the effective date of his retirement.

17:2-6.19 Maximum allowance prescribed

Where someone, other than a legal guardian, acting in behalf of a member makes application for a retirement allowance, such individual may not elect other than the maximum allowance for the member and the member's estate must be designated as the beneficiary for all death benefits payable on the member's account.

Amended by R.1979 d.399, effective October 9, 1979.
See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

17:2-6.20 Final compensation; 10 and 12-month members

(a) In order to determine the final compensation (three-year average) for benefits on a:

1. Member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made to the system for his final 30 months of service.

2. Member reported on a monthly basis under a 12-month contract, use the creditable salaries upon which contributions were made to the system for his last 36 months of service.

(b) If a member was reported on any combination of ten and 12-month contract years in such three-year period, the final average compensation shall be determined on a proportional basis.

(c) The months for which no contributions were made shall be counted as zero.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

Case Notes

Full amount of pension; requiring former employer to submit retroactive payment into retirement system reserve fund. *Muzzarelli v. Public Employees' Retirement System*, 94 N.J.A.R.2d (TYP) 214.

17:2-6.21 Determination of last year's salary; veterans (veteran one-half pay retirement)

For a member reported on a monthly basis under a ten-month contract, use the creditable salaries upon which contributions were made in the member's final 10 months of service preceding retirement; on a 12-month contract basis, his final 12 months of service; combination of 10 and 12-month contracts, on a proportional basis. The months for which no contributions were made shall be counted as zero.

Amended by R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).

17:2-6.22 Waiver

(a) If for any reason a retirement allowance or portion thereof has been waived by a retired member or beneficiary, the benefit waived shall remain in the retirement reserve fund.

(b) Such person may cancel the waiver effective as of the first day of any month subsequent to the receipt of the notice of cancellation; however, he may not make a claim for payment of any benefits waived prior thereto.

17:2-6.23 Additional contributions

The additional contributions made under N.J.S.A. 43:14-17 as elected by the member, shall be credited for the purpose of retirement, with interest in the same manner as

employed in the calculation of the regular retirement allowance.

Amended by R.1971 d.71, effective May 18, 1971.
See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

17:2-6.24 Final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) In computing "final compensation" upon which pension contributions were based, in the case of a 12-month State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments that are attributable to the prescribed period.

(b) In computing (a) above, the total salary will be adjusted by the factors supplied by the actuary to convert biweekly salaries to compensate for State biweekly payroll schedules. Application of the factors to the salaries reported for pension purposes will develop "final compensation".

(c) In computing (a) above in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive a salary. The adjustment as specified in (b) above shall not be made.

(d) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the final average compensation prior to retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).
Amended by R.1978 d.138, effective May 1, 1978.
See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).
Amended by R.1990 d.377, effective August 6, 1990.
See: 22 N.J.R. 1348(a), 22 N.J.R. 2342(c).

Benefits based on salary attributable to the prescribed period.

17:2-6.25 Determination of last year's salary; State employee veterans reported by centralized payroll

(a) In computing the salary upon which pension contributions were based during a member's last year of service, in the case of a 12-month State employee reported on a biweekly basis, a total of 26 biweekly pays will be used, including any retroactive salary payments made within the prescribed period. The total salary will be adjusted by factors supplied by the actuary to compensate for State biweekly payroll schedules.

(b) In computing (a) above, in the case of State employees reported on a 10-month basis, the total biweekly pays will include those pay periods in the third quarter of each year in which the member does not receive salary. The adjustment as specified in (a) above shall not be made.

(c) If a member was reported on a biweekly basis on any combination of 10 and 12-month contract years, the last year's salary prior to death or retirement shall be determined on a proportional basis. The biweekly pay periods for which no contributions were made shall be counted as zero.

R.1974 d.230, effective August 19, 1974.
See: 6 N.J.R. 32(a), 6 N.J.R. 361(a).
Amended by R.1978 d.138, effective May 1, 1978.
See: 10 N.J.R. 38(a), 10 N.J.R. 265(c).

Case Notes

Determination of retirement allowance on basis of last 26 pay periods as figure for last year of compensation was proper. *Rossi v. Public Employees' Retirement System*, 95 N.J.A.R.2d (TYP) 9.

17:2-6.26 Medical examination; physician

Where the statute prescribes that a physician be designated by the retirement system to perform a medical examination, such physician shall be selected from the current membership directory of the Medical Society of New Jersey and the New Jersey Association of Osteopathic Physicians and Surgeons; however, in the cases of those members whose personal physician has identified them as having a probable abbreviated life expectancy, such "imminent death" cases may be processed without the necessity of an examination by a physician designated by the Fund if corroborating medical evidence of the diagnosis can be obtained.

Amended by R.1977 d.148, effective April 27, 1977.
See: 9 N.J.R. 142(b), 9 N.J.R. 295(a).
Amended by R.1981 d.515, effective January 18, 1982.
See: 13 N.J.R. 748(a), 14 N.J.R. 105(a).
Deleted "in order to . . . fund" and substituted therefor "in the cases . . . obtained."

17:2-6.27 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her

residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's dues.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and was paid for by the employer.

New Rule, R.1989 d.422, effective August 7, 1989.
See: 21 N.J.R. 1285(a), 21 N.J.R. 2300(b).

Case Notes

Housing inspector's fall while exiting car at end of day not caused by traumatic event, and not in course of regular assigned duties, and thus no eligibility for accidental disability retirement benefits. *Delunas v. Board of Trustees of the Public Employees' Retirement System*. 93 N.J.A.R.2d (TYP) 42.

SUBCHAPTER 7. TRANSFERS

17:2-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

1. A member, desiring to transfer his or her credits to any State-administered retirement system, must file an application for "Transfer of Membership Credit" in place of the customary application for withdrawal of accumulated contributions. This application will void all possible claims against the present system when approved and the new membership is commenced in the new system.

2. A check covering the member's accumulated contributions, full interest included, less any outstanding loan, shall be drawn payable to the new system for the account of the respective member. Any outstanding loan or arrears obligation will be scheduled for repayment.

3. A statement reflecting the member's status as of the date of transfer shall accompany the check.

4. The member shall enjoy the same rate of contribution and service credits established in the present system, subject to the provisions of the new system.

5. This procedure would not apply where a member has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for a deferred retirement.

6. A copy of the transfer application, together with a check covering the withdrawal value and a statement of the service credits being transferred, is to be forwarded to the new system.

(b) The new system will cause to be valued the reserves accrued for such employee as compared to the reserves required in the second system.

1. If the reserves accumulated or provided for in the present system are less than those required in the new system, the full reserve will be transferred.

2. If the reserves accumulated or provided for in the present system are more than those required in the new system, only the amount required to establish the credit will be transferred.

(c) Years of credit will be subject to the benefit formula of the new system after transfer.

(d) A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer

will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.

As amended, R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

As amended, R.1983 d.7, effective February 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Subsection 17:2-7.2 deleted, combined with 7.1, language added.

Amended by R.1988 d.141, effective April 4, 1988.

See: 19 N.J.R. 2386(a), 20 N.J.R. 812(a).

Substantially amended (a)5 and (d).

Cross References

Interfund transfers, accumulated interest, see N.J.A.C. 17:1-12.5.

Case Notes

Teacher not entitled to reverse withdrawal from pension fund in order to obtain interfund transfer of service time. Long v. Public Employees' Retirement System Board of Trustees, 93 N.J.A.R.2d (TYP) 112.

17:2-7.2 (Reserved)

As amended, R.1971 d.71, effective May 18, 1971.

See: 3 N.J.R. 50(a), 3 N.J.R. 117(b).

As amended, R.1979 d.399, effective October 9, 1979.

See: 11 N.J.R. 411(a), 11 N.J.R. 596(b).

R.1983 d.7, effective January 7, 1983.

See: 14 N.J.R. 1150(a), 15 N.J.R. 162(d).

Section deleted.